

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:07-CV-33-RJC-DCK**

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|--|---|---------------------|
| RUBBERMAID, INC. |) | |
| d/b/a Rubbermaid Medical Solutions, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | <u>ORDER</u> |
| |) | |
| SIGNALIFE, INC., |) | |
| |) | |
| Defendant. |) | |
| |) | |

THIS MATTER IS BEFORE THE COURT on Defendant’s “Motion to Dismiss/Stay” (Document No. 7) and “Brief In Support Of Motion To Dismiss/Stay” (Document No. 8), filed January 29, 2007; “Rubbermaid’s Motion To Consolidate” (Document No. 11), filed February 14, 2007; “Rubbermaid’s Opposition To Signalife’s Motion to Dismiss/Stay” (Document No. 12), filed February 15, 2007; Defendant’s “Reply Brief In Support Of Motion To Dismiss/Stay” (Document No. 13), filed February 28, 2007; “Signalife’s Response To Rubbermaid’s Motion To Consolidate” (Document No. 14), filed March 5, 2007; and “Rubbermaid’s Reply In Support Of The Motion To Consolidate” (Document No. 15), filed March 13, 2007. These matters have been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §636(b) and are now ripe for review.

Having fully considered the arguments, the record, and the applicable authority, the undersigned will grant the motion to stay and deny the motion to consolidate.

On September 20, 2007, the Honorable Graham C. Mullen issued an Order in the similar case of Signalife, Inc. v. Rubbermaid, Inc., Newell Rubbermaid, Inc., Gary Scott and David Hicks, Civil Action No. 3:07-CV-56 (Document No. 24) mooted “Rubbermaid’s Motion to Consolidate” and

granting Plaintiff's "Motion To Remand" to the Superior Court of Mecklenburg County. In light of Judge Mullen's recent decision, the undersigned finds that "Rubbermaid's Motion To Consolidate" (Document No. 11) in this case must also be denied as moot. Furthermore, now that a parallel action is once again pending in state court with substantially the same parties litigating substantially the same issues, the undersigned finds that it is appropriate and in the interests of judicial economy to stay this case.

In support of this course, the undersigned relies on Colorado River Water Conservation Dist. v. United States, which stated, "federal courts may abstain from exercising their jurisdiction in the exceptional circumstances where a federal case duplicates contemporaneous state proceedings and '[w]ise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation' clearly favors abstention." Vulcan Chemical Technologies, Inc. v. Barker, 297 F.3d 332, 340-41 (4th Cir. 2002) (citing Colorado River Water Conservation Dist. v. United States, 424 U.S. 800, 817 (1976)). The undersigned recognizes that "abstention should be the exception, not the rule," but notes that in these circumstances it does appear that "the parallel state-court litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." Vulcan, 297 F.3d at 341 (citing Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 28 (1983)).

Plaintiff's argument to the contrary, that Defendant's "Motion to Dismiss/Stay" was mooted by the removal of Signalife, Inc. v. Rubbermaid, Inc., Newell Rubbermaid, Inc., Gary Scott and David Hicks, is now itself mooted by Judge Mullen's subsequent Order to remand that case.

IT IS, THEREFORE, ORDERED that Defendant's "Motion to Dismiss/Stay" (Document No. 7) is **GRANTED** to the extent that this case is **STAYED** pending the resolution of Signalife,

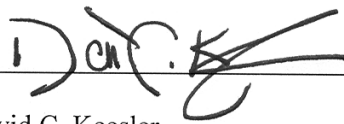
Inc. v. Rubbermaid, Inc., Newell Rubbermaid, Inc., Gary Scott and David Hicks in the Superior Court of Mecklenburg County.

IT IS FURTHER ORDERED that within thirty (30) days of a resolution of the above mentioned matter in the Superior Court of Mecklenburg County, the parties shall jointly file a status report or a voluntary dismissal of this case.

IT IS FURTHER ORDERED that “Rubbermaid’s Motion To Consolidate” (Document No. 11) is **DENIED AS MOOT**.

SO ORDERED.

Signed: September 24, 2007



David C. Keesler
United States Magistrate Judge

